

Disrupting Harm

Evidence from 13 countries on the context, threats, and children's perspectives of online child sexual exploitation and abuse.

Detailed Analysis of Access to Justice and Legal Remedies in Thailand
Interviews with Justice Actors

Last updated 25/03/21

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This report is a summary of preliminary data collected for this research project. The perspectives contained herein represent the individuals interviewed and surveyed. Support from the Fund to End Violence Against Children does not constitute endorsement.

Introduction

Disrupting Harm: evidence to understand online child sexual exploitation and abuse (OCSEA), is a unique and collaborative research partnership between ECPAT International, INTERPOL, and UNICEF Office of Research – Innocenti. Leveraging their specific expertise, each partner sheds light on separate but interconnected areas: context, threats and children’s perspectives on online child sexual exploitation.

- Context by ECPAT International through portraying laws & policies in action;
- Threat by INTERPOL through the collection of crime and other data;
- Children’s voices by UNICEF Office of Research - Innocenti through surveys with children and their caregivers.

The countries of focus in Southern and Eastern Africa region are: Ethiopia, Kenya, Mozambique, Namibia, South Africa, Tanzania, and Uganda. The countries of focus in the Southeast Asian region are: Cambodia, Indonesia, Malaysia, Philippines, Thailand, and Vietnam.

Research took place between 2019 and 2021. Up to nine separate research activities were undertaken in each country by the three project partners. Preliminary analysis for each activity was first conducted before the results across all the nine activities were consolidated into each national country report. These can be found here.

In Thailand, the data was collected through 11 semi-structured interviews involving 13 respondents. (two interviews were conducted with two attending respondents). The respondents were: two police officers, three public prosecutors, six lawyers, one social worker and one NGO staff member. All respondents received the questions in advance, as well as a consent form to sign prior to the interviews.

The respondents play different roles in supporting children to participate in criminal cases against OCSEA perpetrators:

- Investigation and interrogation: One of the interviewed police officers works as an investigator covering several provinces located in the northern region of Thailand. He also works with Thailand Internet Crimes Against Children (TICAC) on the investigation of OCSEA cases taking place in the respective provinces. Another police officer is working as an inquiry official, checking and polishing investigation reports on OCSEA.
- Prosecution: Although the general work of the interviewed prosecutors is related to OCSEA, their specific roles are different. Interviews were held with the public prosecutor in Pattaya beach, Chonburi – a famous sightseeing location for tourists. Therefore, the respondent shared a lot of their experience on how to work with homeless children living in Pattaya, especially when those children are involved in OCSEA. Another public prosecutor works on the drafting of OCSEA bills. Finally, the third prosecutor focuses on organising youth-targeted activities to raise public awareness of OCSEA.
- Multi-disciplinary team: the rest of the respondents are made up of six lawyers, one social worker, and one NGO staff member working in the multi-disciplinary team to support the work of the police officers and public prosecutors on investigating and prosecuting OCSEA offenses.

ID Number	Organisation	Position
RA4-TH-01-A	Lift International	
RA4-TH-02-A	Foundation of Child Understanding (FOCUS)	Lawyer
RA4-TH-03-A	Investigation Unit 4, Investigation Division, Provincial Police Region 5	
RA4-TH-04-A	The HUG Project	Director
RA4-TH-04-B	The HUG Project	Social Worker
RA4-TH-05-A	Office of the Public Prosecution	Deputy Attorney
RA4-TH-06-A	SR Law Firm	Lawyer
RA4-TH-07-A	TLCS Legal Advocate	Lawyer
RA4-TH-08-A	The Office of the Attorney General	Provincial Public Prosecutor
RA4-TH-09-A	Social Equality Promotion Foundation	Lawyer
RA4-TH-09-B	Social Equality Promotion Foundation	Director
RA4-TH-10-A	Department of the Trafficking in Persons Litigation, the Office of the Attorney General	Deputy Director General
RA4-TH-11-A	Metropolitan Police Division 1, Crime Prevention and Suppression, Royal Thai Police	

Access to the Justice System

Services provided to victims of OCSEA during the criminal justice process

Thailand has established multi-disciplinary government One-Stop Crisis Centres (OSCC) that offer coordinated medical, legal, and counselling services for child and adult victims of violence, including sexual violence. This was achieved through cooperating with police, the courts, the Office of the Attorney General, NGOs, emergency shelters, and the Ministry of Social Development and Human Security.¹ They were first established in provincial hospitals and later expanded to the district level. As of 2013, there were twenty two thousand OSCCs and one thousand three hundred mobile units around the country.² Although the quality of services and staff capacity may vary by location, OSCCs generally represent the most professionally qualified component of the child protection system.

According to information gathered through the interviews, significant tasks of the multi-disciplinary team include:

- Interviewing children with child-friendly questions and language;
- Preparing children (child victims and witnesses) to reduce their nervousness and pressure while in court, especially to answer questions related to abuse and exploitation they experienced;
- Collaborating with stakeholders and other implementing partners, such as private sector actors (Internet and communication companies) to gain information and evidence, and passing it to the police;
- Helping child victims and parents to claim for compensation, and;
- Providing child victims and parents/ guardians with social support services as appropriate.

However, a number of shortcomings of the OSCC were also mentioned by the respondents, which can limit the capacity of the multi-disciplinary team and implementing partners to support child victims.

Although not all provinces have established the full complement of support services and, indeed, quality of services can vary significantly by location, all provinces do have at least one OSCC and a Children's Reception Home in place. The majority of formal child protection services tend to be concentrated at the provincial level and located in the capital, with limited outreach or access to the Tambon Administration Office (TAO) or community level. The presence of NGOs differs by location and acts to supplement and support government structures in many districts across the country. Interviewed lawyers and social workers working in the northern region of Thailand mentioned that they always collaborate with other implementing partners, in particular police officers and prosecutors, to support OCSEA child victims to access a proper judicial process.

OSCC staff are only technically involved while the child is in the care of the hospital. Hence, services are provided with a primary focus on immediate response to cases of abuse and violence against children that have already occurred. Interviewed OSCC staff explained that human resources constraints limit capacity for follow up or provision of care or support services beyond immediate

¹ ECPAT International, Plan International, Save the Children, UNICEF and World Vision (2014). [National Child Protection Systems in the East Asia and Pacific Region: A review and analysis of mappings and assessments](#)

² UN WOMEN (April 10, 2013). [Thailand launches One-Stop Crisis Centre to respond to violence against women.](#)

physical needs. Further, OSCC staff do not have the mandate or capacity to provide preventative or follow-up care to children and families, as their responsibility typically terminates upon discharge from the hospital.

The interviews showed that OSCC staff appear to have received minimal specialised training in counselling, risk assessment or skills for conducting interviews with children. Awareness and capacity of OSCC staff with regard to protocols, procedural guidelines and effective coordination among relevant agencies and services external to the hospital is low, beyond limited coordination between the OSCC and Reception Homes for Children. In Thailand, social workers do not need to hold a social work degree,³ and even a social work degree does not guarantee that the person has knowledge and skill in counselling, risk assessment and interviewing child victims. The Social Work Professions Council (SWPC) tries to solve this by providing a social work license to persons who are registered SWPC members, pass an examination and complete an internship to confirm that they have enough knowledge and skills to work with the clients, including child victims.⁴ However, the license is not a mandatory requirement to apply for social work positions in government agencies.

The interviews also showed that challenges relating to social norms and taboo exist. Indeed, the interviews highlighted that if the victim, parents, or immediate family is not willing or able to formally report child abuse cases to the authorities, in most cases nothing further will be done. Unlike physical abuse which can be clearly observed, sexual abuse, especially by family members, is reportedly much more difficult to identify.⁵ This challenge is related to social norms and taboos since it is a kind of shame for the family to expose sexual exploitation and abuse that happened to their children. Moreover, if the abuser is the family's breadwinner, prosecuting the abuser will lead to a worsening of the family's economic status. No government agency provides long-term care to child victims. Another option is to find other family members who are capable of taking care of the children. According to interviewed service providers and policymakers, family members also stay in the same community which cannot fully protect the children from social norms that are harmful to them. Living in the same environment is also risky as it may expose children to experiencing sexual abuse and exploitation again in the future.

As explained by one respondent about moving abused children to a safe place, *“we work with a multidisciplinary team, and OSCC also helps. The parents are also not strong enough as they seem to have autistic conditions but still can work. Besides, the child should be separated from school, because she will be teased, and separated from the family who can abuse her. We have to separate them to reduce the risk to be re-exploited”* (RA4-TH-09-A, Lawyer, Social Equality Promotion Foundation).

³ Office of the Civil Service Commission. (2011). [Job specification: operating social worker](#). An operating social worker is a person who “obtained a bachelor’s degree or other comparable qualification in any discipline in psychology Department of Social Work Faculty of Social Sciences and Behavioural Sciences or political science or one or more of the aforementioned disciplines in a way that the government agency deems that appropriate for their duties, responsibility, and the nature of the work performed”.

⁴ Social Work Professions Council. (2020). [Social Work Licensing Process](#).

⁵ Child Frontier (2013). [Evaluation of the UNICEF Child Protection Monitoring and Response System \(CPMRS\) in Thailand and Volume III – Child Protection System Context](#).

How OCSEA cases come to the attention of criminal justice actors

Principally, OCSEA victims should report the cases directly to the police officer. According to one of the respondents, a police officer, the local police suggest that victims report to the Investigation Division Provincial Police Region 5, a police enforcement unit specifically handling OCSEA cases.

"In terms of filing complaint process, child victims do not know where to file the case. They usually will decide to file the case at the police station in their area. The police station, however, will not accept the case but will issue a daily report. Then the police officer will suggest the victim bring the daily report to us [Investigation Division Provincial Police Region 5]" (RA4-TH-03-A, Investigation Unit 4, Investigation Division, Provincial Police Region 5).

This is problematic, in particular for children in remote areas or different provinces, as they might spend about a day traveling from their residence to the Investigation Division Provincial Police Region 5 based in Chiangmai. This may make it impossible for them to bring their case at all, and hence impede them from accessing justice. A proper approach would be for the local police to take the reported circumstance and report it further to the Investigation Division Provincial Police Region 5, rather than ask children to do it themselves.

The interviews showed that victims generally contact NGOs or social workers for consulting about their problems. At the same time, NGO staff and lawyers will then pass the cases on to the police. Later, the police may coordinate with some governmental and non-governmental bodies, such as NGOs or private sector actors (e.g. communication companies, etc.) for the investigation, interrogation, and evidence collection. Consequently, the police will then hand over the collected evidence and information about identified witnesses to the prosecutors.

However, one of the respondents, who is a prosecutor, exposed that: *"mostly, police officers convey cases to us. Also, I was informed by social workers and local NGOs on the delay of case submission from police officers. To expedite the police officers' process, I suggested social workers and NGOs staff on a procedure to collect evidence and provide it to the police officers. Therefore, a government entity for case management is crucial for better operation"* (RA4-TH-05-A, Deputy Attorney, Office of the Public Prosecution).

The interviews showed clearly that the police cannot work alone, and at the same time NGOs cannot be informally responsible for collecting evidence. The suggestion of a government entity to manage OCSEA cases could provide a better framework for operations and ensure a formal cooperation with clear roles and responsibilities.

Generally, child victims do not want to tell others what they are facing. One interviewed public prosecutor stated that *"child victims or family members are not willing to file a complaint because of shame. Sometimes we found many child victims' photos, yet we could not cooperate with victims' parents. For example, 1-2 victims were willing to file a complaint, although we found more than ten child victims"* (RA4-TH-10-A, Deputy Director General, Department of the Trafficking in Persons Litigation, the Office of the Attorney General).

To overcome this challenge, the Thailand Internet Crimes Against Children's [Facebook page](#) has been increasingly promoted to encourage child victims to report OCSEA cases to the police confidently.

"We do not receive cooperation from a child victim, or a child victim is scared to file the case. Later on, we create and promote the Thailand Internet Crimes Against Children Page to receive chat messages from child victims. It is one solution to make child victims have more channels and confidence to reveal their stories" (RA4-TH-03-A, Investigation Unit 4, Investigation Division, Provincial Police Region 5).

However, after reporting the cases, children will have to present themselves before the police, together with their parents, if they are younger than 18 years old. At this stage, based on the multi-disciplinary guideline, the police officers will coordinate with partner NGOs on empowering the children to participate in the justice process. Some NGOs have psychologists and social workers who know how to talk to the children and parents properly. So, with the support of NGOs, child victims can tell the police what happened to them.

The practice mentioned above is an ideal that can be implemented only in some areas where the multi-disciplinary team and guideline are well developed. In many areas, multi-disciplinary teams are just getting started and the practice mechanism is still not strong enough. As a result, children cannot be said to be properly protected all over the country.

In accordance with information gathered from the interviews with implementing partners, the multi-disciplinary teams probably face problems with adequately supporting OCSEA child victims, especially due to a lack of knowledge, skills and understanding of communication technology and devices.

As one interviewed social worker stated: *"sometimes, NGO staff just deleted the pornographic photos from the website or social media immediately, rather than report to the relevant agencies such as Thailand Internet Crimes Against Children who know how to properly delete the data after ensuring it as part of evidence submitted to the court"* (RA4-TH-04-A, Director, The HUG Project).

Participation in the Justice Process

Description of how children participate in the criminal justice process

Children and their parents/guardians will participate in the criminal justice process when their cases are reported to the police. For OCSEA or other criminal offenses against children, a multi-disciplinary team works closely with the child victims. According to the interviewed lawyers working with child victims, children will only talk to someone they trust.

Hence, one of the respondents said that *“...when the children enter the legal process, we should talk to them appropriately to create a sense of trust and understanding for them to tell us the truth. The children should have confidence that they will not be sentenced as an accessory or an accomplice...”* (RA4-TH-05-A, Deputy Attorney, Office of the Public Prosecution).

Besides, some children are involved in the criminal justice process as witnesses. One of the interviewed lawyers working with an NGO based in Bangkok talked about the services given to protect child witnesses, saying that *“there are safe houses (for children) managed by the Ministry of Justice. However, we are a private organisation, so we cannot request it. Instead, we request an emergency home with the same function as a safe house, with guards to protect woman victims”* (RA4-TH-09-A, Lawyer, Social Equality Promotion Foundation).

Nevertheless, the interviews showed that some children are also involved in the crime – they will then avoid telling the truth, which makes identifying the primary offenders a challenge for the police.

One of the interviewed public prosecutors stated that *“I found a case in Pattaya of a foreign or a wealthy guy giving 100-200 Baht to a schoolboy to play games and doing sexual touch to the boy. After that, the offender asked the boy to recommend his friends to come. It makes the boy who became a victim feel that he would also become an accessory to conduct the crime if he told the truth”* (RA4-TH-05-A, Deputy Attorney, Office of the Public Prosecution).

Several respondents also talked about children committing offenses, and some of them used to work on OCSEA cases in which the offenders were children. When the child offenders participate in the justice process, the implementing partners should understand that *“...working on online child abuse cases takes more time and requires special attention. For child abuse cases, we need to understand the context to bring child offenders for punishment. Still, we need to understand the child's trauma and find suitable mental and physical treatment to go back to society. We also have to understand the reason behind why children commit the crime...”* (RA4-TH-05-A, Deputy Attorney, Office of the Public Prosecution).

Thai law limits children's criminal responsibility by their age. Children under 7 years old are not liable to criminal punishment. Those between 7 and 14 are not liable to any punishment either, but the law gives the court the option to use juvenile procedures, depending on the child's behaviour and environment and other mitigating circumstances, thereby giving the child an opportunity to turn over a new leaf rather than punishing them severely as a deterrent. Above that age (15 years and older),

children may have to face criminal punishment, but the court may use its discretion to reduce the sentence.⁶

According to information received from interviewed officials of the Department of Juvenile Observation and Protection (DJOP), the justice process for children or youth involved in a crime considers them as criminals or wrongdoers. Some children experienced being sentenced at the DJOP shelter more than once. The support from the community and parents is lacking while society establishes some conditions for discriminating against children who used to be under the supervision of DJOP, regarding recruitment.

More importantly, different treatments and services given to children committing or being involved in a crime and those who are victims. Children and youth in DJOP shelters do not receive the proper medical care, especially mental health care, while the child victims, especially in human trafficking cases, can receive more comprehensive treatments and services as required by law. Hence, it is important that children are treated as victims in order to support them to access the proper treatments and services that can further prevent them from becoming involved in OCSEA crimes in the future. In addition, one of the interviewed lawyers reflected that treating children as victims is also related to the access to compensation. *“I used to work on a child prostitution case and at that time, the girl admitted that she was willing to be a prostitute. However, it is not the right thing to treat her as a criminal but what we proposed to the court and other implementing partners at that time was the girl was also a victim...in this case, as a victim, she could receive the compensation provided by the government agencies...although it is not big amount of money, it is better than nothing”* (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

Description of what the criminal justice professionals see as the hardest part for children taking part in criminal cases against their abusers

Two participants mentioned that a very hard part for children taking part in criminal cases is the worry of parents regarding the future of their children: *“most parents do not want to proceed with the case; they are worried that it will affect children's mental health and education. However, such kind of worry cannot sustainably eliminate the problem. If the case enters a legal process, it will help relieve the victim's mind. The relief starts by telling us the story, telling the parents the story, and entering a judicial process to get the appropriate sentence”* (RA4-TH-04-A, Director, The HUG Project).

Regarding the abovementioned issue, it is not only difficult for parents, but also for the children. For example, once an OCSEA case is shared with third parties [for children, the third parties are usually their trusted friends], the case may be reported to the police and implementing partners, including social workers or lawyers. The interrogation and investigation must be conducted with everyone that may be involved in the case. It is highly possible that the case will be exposed to the child's school or the community where the victim's family is living. It is common in Thailand that students who are involved in an unpleasant situation, such as unwanted pregnancy, drug addiction or OCSEA will be asked by the school principal or parent association of that school to quit, to maintain the school

⁶ Kanokpun Kalyanasuta and Atchara Suriyawong. [The Criminal Justice System and Community-Based Treatment of Offenders in Thailand](#). p.272

reputation. Hence, parents have to look for a new school for their child. In addition, it is possible that the victim's family needs to find somewhere else to stay if the case is exposed to their neighbours.

The influence of the media is also important. Journalists commonly assume that if children had proper behaviour, they would not have been victimised. Many news articles generally remind parents and guardians to closely monitor the Internet and social media use of their children. Hence, the media frames OCSEA victims as children with improper manners. Consequently, parents whose children are victims of OCSEA worry that their children will encounter blame and shaming from the school or, the community if the case is reported to the police officers. Finally, the parents, due to their worry, are reluctant to help/let their children enter the justice process.

Another difficulty in relation to children's participation in criminal cases is that many OCSEA perpetrators are related to the child victim. In such cases, prosecuting the offenders will affect the lives of children, especially if they are poor:

“Some may use poverty as an excuse to conduct online crime; because it was just pornography or just live streaming. Some said that it was just a show to earn a living, not an abuse. Considering this crime level with total separation from the family, I think it is challenging to decide if the child victim can return to the family. When the money they receive from the abuse is for the living, I think it is too difficult to file a case for the meals of the child victim itself” (RA4-TH-06-A, Lawyer, SR Law Firm).

Hence, child victims may not want to participate in the justice process against their abusers.

According to an interviewed lawyer whose working area is in the northern region of Thailand, *“the justice system will handle OCSEA cases differently based on the evidence and intention of offenders” (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).*

For example, if an offender asked the child's parents to sell pornographic photos of their child to him, and the offender subsequently sold those photos to others online – the case will be considered a human trafficking offence and both the offender and the child's parents will be prosecuted. On the other hand, if the parents took and shared photos of their children [when they are in a bathtub or getting dressed etc.] on social media, such as Facebook and Instagram – the judge may consider that this case amounts to possession of child sexual abuse materials. Hence, it is the responsibility of implementing partners to figure out whether the parents know that what they did is illegal. In case the parents did it without knowledge, the multi-disciplinary team, such as the lawyer, will inform and remind them not to do it again in the future. Conversely, if the parents referred to the poverty pressuring them to sell the photos of their children, they will be treated as accomplices that need to be legally punished. Poverty is not a reason for parents to exploit their children. So, the justice process significantly relies on the assessment and consideration of the multi-disciplinary team, as well as the understanding and knowledge of the judge on crime against children, including human trafficking and OCSEA, etc.

Description of what is done by different criminal justice professionals (police, judges, prosecutors, lawyers, or other relevant staff) to make the process easier for children

The interviews showed that there are several initiatives to make the justice process easier for child victims of OCSEA.

In regard to the fast trafficking of complaint filing, one of the respondents mentioned that *“I heard that the Royal Thai Police Office approved to run the newly-established cyber police under the Technology Crime Suppression Bureau. The tasks include handling cases involving computer-related offenses, including online child abuse cases. Provincial Police Region 5 also has Children Women Families Protection Centre working directly on child exploitation cases. It nevertheless needs more promotion to the public...the newly-established cyber police under the Technology Crime Suppression Bureau will help people to have better access to file child abuse cases...”* (RA4-TH-03-A, Investigation Unit 4, Investigation Division, Provincial Police Region 5).

The multi-disciplinary team also plays an important role: *“Before starting the investigation, we will identify the child's age. If the child's age is less than 18 years old, I will invite a multi-disciplinary team to join the investigation. If the person/victim's age is beyond 18 years old, it depends on their cooperation”* (RA4-TH-03-A, Investigation Unit 4, Investigation Division, Provincial Police Region 5).

The law provides a child victim whose age is less than 18 years with the child protection committee consisting of government officials and experts from several professions working related to children, as stated in Section 7 of the Child Protection Act 2003.⁷

The multi-disciplinary team is required to collaborate with the parents of child victims. Such a requirement brings about some challenges, as explained by one of the respondents:

“When an online child abuse case happens, the child is terrified that the parents will know the story. It puts us in a difficult situation because a case for a child aged less than 18 years old requires parents to acknowledge the legal process...cases reported on Facebook do not count as filing a complaint. Children who are less than 18 years old require parents/guardians to be involved in a legal process” (RA4-TH-04-A, Director, The HUG Project).

The multi-disciplinary team must know how to communicate and build good relationships with parents and child victims to bring about effective participation in justice process and make a proper assessment of the child's situation.⁸ For example, when deciding whether or not to separate the child from the family, it is important to analyse if the abuse is due to a lack of parental skills or an intention to exploit the child. In case family members do not know how to take care of their child properly, the multi-disciplinary team should provide them with parental training and closely monitor their conduct. Separating children from their family is a major issue, hence the complete analysis of a skilled and knowledgeable multi-disciplinary team is important. Improper consideration and assessment of the multi-disciplinary team may cause further harm to child victims.

One of the interviewed lawyers explained that she and her colleagues would help practice with the child victims and witnesses before going to the court. That would make the children more confident.

“When we practice with the witness, we need to ask the children questions. By that time, the children will have the courage to talk. We also ask the children to take notes to arrange memory in their thoughts and give the notes to us. This measurement will make the children think carefully, and they feel that we are not asking many questions. In some words, we have already understood the meaning.

⁷ Government of Thailand (2003), [The Child Protection Act of 2003](#), Section 7

⁸ Department of children and youth. (2019). [Manual and Protocol: Protecting and helping children at risk and is a victim of abuse, neglect, exploitation and violence.](#)

We know actions of sexual exploitation, so we will not ask direct questions” (RA4-TH-09-A, Lawyer, Social Equality Promotion Foundation).

Practicing with children before going to the court can be important, because Section 276 – 287 of the Thai Criminal Procedure Code⁹ states different definitions and punishments for sexual assault, indecent act, or harassment, and so on, so it is unavoidable to ask such detailed questions. Without questioning the child victims or witnesses in detail, the true allegations cannot be made.

“The Office of the Attorney General has conveyed a primary policy to provincial offices, especially in the Pattaya area, to assist according to the Thailand Criminal Code for child inquiry. We have an Office of Civil Rights Protection that proactively cooperates with NGOs and social workers. To illustrate, our organisation can also suggest children shelters and NGOs related apart from investigating responsibility... Apart from interviewing child victims according to the Criminal Procedure Code, we always talk to child victims and social workers and convey messages on how trauma treatments should be conducted and how to find a psychologist. We currently have the Office of Civil Rights Protection to act as a training centre for prosecutors and social workers to talk to child victims. Besides, my office works like a case management centre to collaborate with the police, NGOs, and social workers under the Ministry of Social Development and Human Security leadership” (RA4-TH-05-A, Deputy Attorney, Office of the Public Prosecution).

Description of what is done by different criminal justice professionals (police, judges, prosecutors, lawyers, or other relevant staff) to make the process harder for children
The interviews highlighted that the relevant professionals may have a negative attitude towards child victims.

“The most difficult challenge at this moment is connected with the law enforcement officers. For example, their attitudes towards their work. What I should say, we cannot impose or force them to think the way we think. Their attitude may stem from having a lack of knowledge. To illustrate this, mostly, law enforcement officers have a bias towards the victims. For example, I am a lawyer, right? We help children requesting compensation. But the law enforcement officers often question why we have to help these kids, as these kids had good opportunities, so why have they chosen prostitution? Why support these kids who have inappropriate behaviours. To put it simply, [they said] why did you help the 'slutty kids,' why don't they go to school instead of being prostitutes. Mostly, they have these kinds of attitudes” (RA4-TH-01-A, Lift International).

One interviewed public prosecutor analysed that the attitude towards OCSEA victims is different between male and female officers: *“Male law enforcement officers will work on a child abuse case with a different attitude than a female law enforcement official. When child abuse case has occurred, a male official may think that she [the victim] would not be abused if she did not go with the culprit. A female official may think that she is willing (to have sex) with her boyfriend but not with his friend” (RA4-TH-05-A, Deputy Attorney, Office of the Public Prosecution).*

Another respondent mentioned the improper manner of some social workers assigned by the court to question the child victims: *“Most of the social workers involved with the cases in the court are the same people. The social workers are always the same. When they ask questions, their questions are*

⁹ Government of Thailand (2008), [Criminal Procedure Code](#), Section 276-287.

what they want to know. Although some questions are relevant to cases, their language shows a lack of concern about whether the children would be hurt or affected by their questions. They just ask for what they want to know...frankly, I would say they are not professional social workers..." (RA4-TH-04-A, Director, The HUG Project).

Nevertheless, some respondents highlighted challenges regarding the multi-disciplinary team. One of them reflected on the lack of psychiatrists in Thailand that *"...it is also challenging to a mental specialist (psychiatrist) as there are very few specialists in Thailand and it takes a long time to get an appointment..." (RA4-TH-06-A, Lawyer, SR Law Firm).*

The interviews highlighted two controversial perspectives regarding the attitude of the judges adjudicating OCSEA cases. Some respondents were of the view that some judges have negative attitudes toward OCSEA child victims.

"...To be frank, the judges are just like sitting in an ivory tower, we cannot educate them by organising training sessions, or by other kinds of activities. We cannot engage them. This includes the institutions and organisations related to the judge and prosecutor, as we know that they are confident that they have a better knowledge of laws than the others..." (RA4-TH-01-A, Lift International).

Another respondent referred to the negative attitude of the judge in a case involving child exploitation in prostitution that he used to work in the past: *"The judge asked, "Is there anybody who has never bought a prostitute?" After that, I did not say anything anymore. It showed the judge's attitude that part of the crime is from children. Although I admit that child prostitution these days is from children's willingness, they got deceived and had received legal protection, so they became victims. Either having consent or not, it is against the law. Why does the judge in a patriarchal society say, "Is there anybody who has never bought a prostitute?" He tried to put the case as an ordinary situation that it can happen. In the end, the judge did his duty. You can see a negative attitude towards women prostitutes (like slutty kids), but you should not mention it publicly. Later on, I know that this judge has a negative attitude, but the legal process remains fair. Although he can work based on the judicial process, it will affect the judgment if he has a negative attitude" (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).*

On the other hand, the respondents who are police officers or prosecutors mostly stated that the judges would focus on the evidence presented by the prosecutor. When asked if they noted any negative attitudes of the judge towards OCSEA victims (with the intention to cross check if the negative perspectives of other respondents would be confirmed – *'kids involving with OCSEA are likely 'slutty'* is one of the popular negative attitudes of the judges exposed by two respondents), another respondent disagreed by saying that:

"...I do not think so [that the judges may have negative attitudes towards OCSEA child victims]. Child victims come from different backgrounds, from a wealthy family to an impoverished family or parent separation family [so, they do not have to be 'slutty kids' to become victims]"

According to him, the court verdict *"...depends on the inquiry report submitted to the public prosecutor that some points may be missing..." (RA4-TH-03-A, Investigation Unit 4, Investigation Division, Provincial Police Region 5).*

So, the prosecutor must collect potential evidence that will convince the judges. Some respondents working for government agencies avoided talking about the judges' attitude. One of the respondents suggested that the relevant professionals, particularly the judges, should use their *legal* sense to consider the cases, not their *common* sense (RA4-TH-06-A, Lawyer, SR Law Firm). According to this participant, the judges are human beings, and bias is unavoidable.

In addition, the interviews showed that professionals from different entities may have different sets of information:

"Information from social workers who went to the field may not be comprehensive. It affects when a public prosecutor adduces only one side of evidence for a prosecution. We sometimes found that the information was made up. For example, a child/adult/family member is asked to recommend more people for sexual abuse. The victim was groomed (either by bribing or any other method) to tell a story in a different dimension. Therefore, the inquiry file that the public prosecutor received to file an indictment will be different from the fact...from a lawyer's perspective, sometimes it is difficult because the information we received is insufficient. We do not know the child victim's background. Although a social worker informed us of the requested compensation amount, we have to prove why the child victim should receive it. Therefore, it is difficult for us to interrogate the child victim to prove that the requested amount is suitable..." (RA4-TH-06-A, Lawyer, SR Law Firm).

Such confusing and unclear information will not benefit the children. It will lead to light punishment for the offenders when the judge is unsure about the exploitation and abuse that the perpetrators did to the children.

Compensation

Child victims can claim compensation either from the perpetrators or from authorised agencies, or both. However, the compensation process is time-consuming and complicated, as described below. Besides, according to three respondents, many of the offenders expressed that they could not afford the compensation. The respondents from the Attorney General’s Office explained what else they could do to support child victims to seek compensation:

“...we may have to request a fund from the Ministry of Justice, which can be claimed right away. Otherwise, the court may provide more options such as allowing a payment into court, and the court may impose lenient punishment. It may benefit both sides...” (RA4-TH-05-A, Deputy Attorney, Office of the Public Prosecution).

Here, ‘benefit both sides’ means that the payment to the court may benefit the offenders through leading to a more lenient punishment. On the other hand, the victims can receive the compensation that they can spend to sustain their life, although it cannot fully compensate the exploitation and abuse they experienced. However, everything depends on the discretion of the judge which will vary from case to case. In addition, compensation in a human trafficking cases will not be a reason to reduce the punishment (RA4-TH-06-A, Lawyer, SR Law Firm). Hence, if OCSEA cases are related to human trafficking, the perpetrators cannot use the compensation as a way to reduce the punishment. One of the interviewed police officers elaborated that there are several factors leading to the level of punishment for OCSEA offenders including:

“...Compensation is one of several ways to reduce punishments imposed. A few actions of extenuating circumstances include showing remorse, willingly confessing his/her crime, and providing testimony so officials can work faster. Nevertheless, it depends on guardians or caretakers whether they will accept the monetary remedies or not. An inquiry officer will include the action in an investigation report for the court’s consideration...” (RA4-TH-04-A, Director, The HUG Project).

Another respondent also talked about the system preparing child victims to claim for compensation, and explained that:

“...we are the first agency to import a process to prepare a “victim impact statement” and we found that it can create an impact. We are working with ATPD of the inquiry team and request them to include the victim impact statement in a testimony, and we found that the victim is granted a compensation...” (RA4-TH-04-A, Director, The HUG Project).

In conclusion, compensation is allocated to child victims through several platforms, while relevant professionals, primarily lawyers, NGOs, and public prosecutors, must support the child to claim for this compensation. They mainly help justify how much monetary compensation the victims should receive, and what else should be provided to the children.

Some respondents stated that the legal provisions regarding access to compensation emphasise the compensation paid by the offenders, including:

- Section 44/1 of the Criminal Procedure Code;
- Section 33 and 35 of the Anti-Human Trafficking Act;
- Chapter 4: Provisions of Assistance and Protection of Safety for Victims of Human Trafficking;

- Compensation Fund from the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act;
- Section 44/1 of the Criminal Procedure Code.^{10,11}

One of the lawyer respondents stated that Section 44/1 of the Criminal Procedure Code supports poor victims in paying for the court fee, since the compensation given in accordance with this provision also covers the court fee:

“...We should request the compensation for them, but the problem was the court fee. I was wondering what we should do. So, the solution was the victims have rights [to request compensation] according to the Article 44/1 of the Criminal Procedure Code. So, we used Article 44/1 for the first time to charge for compensation. The first case was related to a paedophile who had sexually abused children. It was not a human trafficking case. We requested for 100,000 Baht and the child victim got that money as compensation. That was five years ago, and that was our good starting point...” (RA4-TH-01-A, Lift International).

In contrast, Section 33 and 35 of the Anti-Human Trafficking Act obligate the Ministry of Social Development and Human Security (MSDHS) to allocate appropriate assistance to human trafficking victims, either adults or children, including concerning food, shelter, medical treatment, physical and mental rehabilitation, education, training, legal aid, repatriation to the country of origin or domicile of that person, and legal proceedings to claim for compensation.¹² It assigns the Public Prosecutor to claim for compensation on behalf of the victims. The Division of Anti-Trafficking in Persons (DATIP), Ministry of Social Development and Human Security is mostly responsible for implementing Section 33 of the Anti-Human Trafficking Act.

Regarding the implementation of these legal provisions, the interviewed lawyer stated that *“...Speaking frankly, the money from the Human Trafficking Protection Fund is problematic, the Human Trafficking Protection Fund is really very difficult to use, and so difficult to access. It is extremely difficult. There are a lot of criteria... However, the victim compensation fund from the Damages for the Injured Persons and Compensation and Expenses for the Accused in Criminal Case Act B.E.2544 is quite possible. An opportunity to receive 15,000 Baht is possible... The fund cannot be reached by victims. Shelters cannot get it as they must prepare a lot of documents, they don't receive that money for their children....”* (RA4-TH-01-A, Thailand)

Pursuant to the Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case Act and the Amendment Act (No. 2),¹³ compensation can be divided into injury and death. Victims must apply for state compensation within 1 year from the date on which the applicant became aware of the offense committed. The compensations are categorised into several groups according to the violence victims were subjected to. For cases of sexual offences, the rates are

¹⁰ Section 44/1 added by Section 3 of the Criminal Procedure Code Amendment Act (No. 24), BE 2548

¹¹ Government of Thailand (2008), [Criminal Procedure Code](#), Section 44/1.

¹² Government of Thailand (2008), [Anti-Human Trafficking Act](#), Section 33 and Section 35.

¹³ Office of the compensation for the Injured Person and the Accused in Criminal Case Rights and Liberties Protection Department, Ministry of Justice. (2018). [Manual: Rights of the Injured Person and the Accused in Criminal Cases](#), pp. 4-5.

different from other violence cases.¹⁴ Hence, the compensation provided to each victim varies. It is the responsibility of implementing partners and the multi-disciplinary team to collect information to prove that the victims are qualified to request compensation within the set time frame. Implementing partners who are not trained may well be unable to effectively access evidence proving the exploitation and abuse against the victims.

One of the interviewed lawyers (RA4-TH-02-A, Thailand) expressed that each legal provision targets different groups of victims. For example, OCSEA victims who are not identified as victims of human trafficking offences, can access compensation under Section 44/1 of the Criminal Procedure Code. On the other hand, children who are human trafficking victims can access the compensation provided under Section 35 of the Anti-Human Trafficking Act. Generally, victims can access the compensation as stated in the Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case Act and the Amendment Act (No. 2). Nevertheless, as stated above, the rates of compensation provided to victims of “sexuality cases” are different from the general cases depending on the guidelines set by the Committee. Child victims of OCSEA cases for example, may receive 10,000 – 30,000 THB compensation (\$322 USD – \$965 USD as of March 2021). The compensation provided to children who are victims of human trafficking cases may be a bit higher than OCSEA child victims. The respondent shared his assumption that the government may want to encourage the victims to claim compensation from the offenders, so the compensation provided by the government doesn’t amount to much. Additionally, the compensation the government allocated to child victims in human trafficking cases is generally higher than that granted to OCSEA child victims. The respondent expressed his opinion that the damage of OCSEA is higher than human trafficking, since it is almost impossible to delete files, photos and videos shared online, thus affecting the lives of child victims forever.

In principle, victims should be able to access all available sources of compensation provided by the government. However, in reality, the victims are limited to access only one source of compensation.

“...the court may ask if they [child victims] already received the compensation from any government agencies, for example if they got the money under the Section 35 of Anti-Human Trafficking Act, the court may not accept their application to access the compensation provided under other legal provisions, such as the Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case Act B.E. 2544 and the Amendment Act (No. 2) B.E. 2559...” (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

Such a limitation is not required by law, but comes from the consideration of the judges. Therefore, the understanding and knowledge of the judges regarding child protection is important in preventing any improper consideration as stated above.

One of the interviewed lawyers explained that there are several compensation types: *“there is also compensation from the loss of education, earning a living, opportunity costs, and parents’ compensation. Therefore, there are several dimensions of compensation based on social status. For the compensation for the loss of education, the child victim I represented did not study, so she could*

¹⁴ Rights and Liberties Protection Department Ministry of Justice. (2019). [Executive summary: compensation and expenses provided to injured person and accused Pursuant to the Damages for the Injured Person and Compensations and Expenses for the Accused in the Criminal Case Act B.E. 2544 and the Amendment Act \(No. 2\) B.E. 2559](#), pp. 1-2.

not claim it. For compensation for opportunity cost, if it is a child victim who is in a relatively good social status, it may be able to claim this item, which the court will grant as per suitable maybe 50,000 – 100,000 Baht” (RA4-TH-06-A, Lawyer, SR Law Firm).

The interviewed lawyer based in Chiangmai emphasised the complexity of compensation categories and recommended to search for more information from the manual developed by MSDHS:

“...there are a lot of details. In the past, people did not know much about the possessing of online pornography cases. In the past, the legislation only mentioned that the Ministry of Social Development and Human Security is an agency to take care of compensation responsibility. Still, there was no practical process mentioned... Later on, the Ministry has developed a manual for requesting and calculating compensation, which contains many details, which I think is an excellent manual for implementing partners... It is a manual (to request compensation) for human trafficking. Still, I think implementing partners can adapt it to child abuse cases...we even requested compensation for losing human dignity, and the court granted it. These categories make it easier to request compensation than in the past. In any case, the request for compensation for each victim will be different based on their contexts...” (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

“In the case of child trafficking that is related to international errands that require transportation cost, DATIP will be responsible for getting the budget from the fund. Sometimes the budget has not yet been approved, so we need to spare the budget and get reimbursement from DATIP” (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

Regarding the type of compensation, one of the respondents was of the opinion that monetary compensation might not be the best option for child victims.

“If we look at a victim's perspective, mental recovery and rehabilitation are a more critical process and redress the harm suffered. Suppose a victim lives in a family with a high risk for sexual exploitation (close relatives are drug users or a paedophile). In that case, the victim will run the risk to be threatened or re-involved in sexual exploitation or having long term mental issues despite receiving monetary compensation as a verdict. So, I think remedies for child victims from exploitation and abuse are more important than monetary rewards” (RA4-TH-07-A, Lawyer, TLCS Legal Advocate).

If OCSEA cases are related to human trafficking offences, victims can access the compensation and funds allocated by several government agencies, such as the Ministry of Justice and the Ministry of Social Development and Human Security, and they are not necessarily mutually exclusive. However, none of the compensation funds are allocated specifically to OCSEA victims.

The exact application will vary based on the actual damage. It also depends on the court's discretion to decide whether or not to grant additional compensation.

One of the respondents stated that: *“In some cases, we can use all legislations together. However, some may consider not to grant another compensation if a victim has already claimed one. For example, suppose we want to request compensation from the Ministry of Justice according to Damages for the Victim and Compensation and Expense for the Accused in Criminal Case Act. In that case, they will re-check if we have already requested compensation from other funds or not. However, in the case of compensation requested from the offender, you can refer to several legislations. Even the Labour Protection Act for wages payment also has a channel to request compensation. For a compensation*

request during the judicial process, the court will consider it based on actual damage. The Anti-Human Trafficking Act Section 35 has a mechanism to provide a government service to request victims' compensation. The victims do not have to hire lawyers for this. At the same time, the victims can also request compensation from Child Protection Act Section 44/1. For example, if a victim thinks that 500,000 Baht compensation (under the Anti-Human Trafficking Act) is not enough, he/she can request more under the Child Protection Act. It is not redundant and is manageable. Nevertheless, it depends on the court's discretion to decide whether to grant additional compensation or not. The government fund's request for compensation is based on the government's considering whether to approve grants in all funds or not. Still, victims can request all kinds of funds as legal rights allow” (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

According to the same respondent, the government and implementing partners have improved the justice system that supports children seeking compensation:

“...in the past, victims faced difficulty to gather all required documents for claiming the compensation from the government and finally, they gave up. Later, the process was developed and simplified. For example, if the cases are reported to local police officers, the documents will be automatically transfer to other implementing partners in the justice system taking charge of compensation claim. In conclusion, the burden of document preparation has been shifted from the victims to the implementing partners, although some problems found in the compensation claiming process and system, such as the inadequate understanding and collaboration of implementing partners that can delay the process, etc...” (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

In Thailand, the court will use the inquisitorial system to investigate human trafficking cases, different from other criminal cases where the investigation still follows the adversarial system. The inquisitorial system allows the judge to ask for any evidence supportive to the victims, increasing the possibility of victims to receive compensation as required. However, the adversarial system, for instance, the capacity of prosecutors to convince the judge on the guilt of offenders using evidence and information they gathered, is utilised for other criminal cases including OCSEA (that are not related to human trafficking). Based on the observation of the respondent, the inquisitorial system will be used when the cases are handled by implementing partners having expertise in human trafficking issues:

“...in some local areas, they [implementing partners] investigate the cases based on the adversarial system focusing on the evidence presented by the prosecutors...the inquisitorial system requires the knowledge and understanding of the judges, otherwise, they will not know how to effectively involve in the investigation...” (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

Therefore, it can be said that the justice system supporting child victims seeking compensation has been improved, although there are still challenges in implementation and comprehensiveness.

Several ministries allocate funds for assisting child victims, as required by the law. Victims of OCSEA can seek compensation under the Civil and Commercial Code, which provides that a person who “wilfully or negligently unlawfully injures the life, body, health, liberty, property or any right of another person” must provide compensation for the harms caused,¹⁵ and that compensation can be sought

¹⁵ Government of Thailand. (1925). [Thai Civil and Commercial Code of 1925](#), Section 420.

for pain and suffering incurred by the victim as a consequence of the acts of the offender.¹⁶

Child victims of OCSEA can also seek compensation through the Anti-trafficking Fund established under the Anti-Trafficking in Persons Act.¹⁷ For several OCSEA related cases in Thailand, child victims have received compensation from this fund if the court ruled that particular trafficking case.¹⁸

Additionally, the Justice Fund Act provides for the establishment of a fund for, among other things, remedies for human rights violations.¹⁹ A victim of OCSEA offenses can receive support from the fund for covering medical and legal expenses.²⁰

During the interviews, three respondents pointed out that the amount of monetary compensation that victims request from the offenders would be decided upon agreement and negotiation. However, interviewed lawyers and prosecutors stated that most offenders could not afford to pay the compensation. Compensation is not limited to money, but child victims are supposed to receive non-monetary compensation to enhance their confidence, independence, and self-esteem. As mentioned above, relevant regulations obligate the government to provide child victims with various kinds of services and treatment.

Accessing the abovementioned established funds is problematic for OCSEA victims, since none of them specifically provide for OCSEA victims. OCSEA victims are only able to receive compensation if they are qualified. For example, if OCSEA offences are related to human trafficking, the victims are identified as human-trafficking victims who can access the Human Trafficking Protection Fund, which provides compensation to all human-trafficking victims (both adults and children). Otherwise, the compensation will be from the offenders.

One of the interviewed lawyers stated that: *“...The Human Trafficking Protection Fund is extremely difficult to get, this is the most difficult. I think the officer from Ministry of Social Development and Human Security just claim the fund exists, so they look good. But in the reality, it is so difficult...”* (RA4-TH-01-A, Lift International).

Generally, child victims can access the compensation/ fund provided by the government. The Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act also identifies the scope of expenses and damages that can be compensated.²¹ The lawyers and social workers will inform the child and the parents of the type of compensation they can claim. However, as mentioned above, the amount of monetary compensation from the government is quite small. On the other hand, claiming for compensation from the offenders is problematic because if the offenders insist that they cannot afford the requested compensation, the victims will get nothing. The offenders can also propose to reduce the amount of monetary compensation. If the victims agree with the proposal of offenders, the compensation can be paid to them.

¹⁶ Government of Thailand. (1925). [Thai Civil and Commercial Code of 1925](#), Section 446.

¹⁷ Government of Thailand. (2008). [Anti-Trafficking in Persons Act of 2008](#), Section 42.

¹⁸ Information received via personal communication.

¹⁹ Government of Thailand. (2015). [The Justice Fund Act of 2015](#), Section 5.

²⁰ Government of Thailand. (2015). [The Justice Fund Act of 2015](#), Section 31.

²¹ See ‘Implementation of relevant legal provisions’

It became clear from the interviews that professionals working with OCSEA cases do not always have sufficient knowledge and understanding of the legal enforcement regarding the victims' compensation.

One of the respondents, a lawyer, mentioned that *"The court granted zero compensation because the court has an attitude that the child was an accessory who assisted/was willing to help in the crime committed. However, we won the appeal. We mentioned that children could not provide any consent (in committing a crime); society has a responsibility to protect children. Finally, the court granted compensation to the child victim"* (RA4-TH-06-A, Lawyer, SR Law Firm). If the lawyer had not appealed, the victim would not have received any compensation.

Barriers to seeking compensation

The respondents identified several barriers to OCSEA victims claiming compensation.

It was indicated that the process of applying for compensation is time-consuming and complicated: *"Prosecutors also put effort into this case. In human trafficking cases, there will be a meeting to consider the amount of granted compensation and public prosecutors will include it in the criminal prosecution. As it is a new concept, compensation may not be included in all kinds of cases. Sometimes there is a delay that the case is over, but the meeting minutes have just reached us"* (RA4-TH-05-A, Deputy Attorney, Office of the Public Prosecution).

Further challenges may emanate from the judge and legal enforcers' attitude: *"There are quite a few cases where the judges have an attitude that the victim should take the compensation, he/she can get. For example, a victim requested 100,000 – 200,000 Baht but the offender only had 10,000 – 20,000 Baht, the court wanted the victim just to accept it. The court just processes it according to the judicial process. If both sides agree, it will lead to imposing light punishment on perpetrators. In any case, I think it is not an appropriate way for the judge to negotiate with the victim in a separate room to reduce the compensation rate dramatically, but sometimes it happened"* (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

In addition to the above, children may not be able to access compensation as the perpetrators mostly cannot afford the requested amount:

"The problem lies with the execution of the sentence as we only receive a paper sentence, not actual money. The offender also gave cash for 100,000 Baht to each of five victims as a monetary remedy to show remorse and confession. It was given in front of us, and I think it was ok. However, in one case where the court ordered compensation of a million Baht to one victim and 2 million to another victim, we did not get the actual money" (RA4-TH-04-A, Director, The HUG Project).

"If the requested compensation amount is appropriate (according to the perspective of judge), the victims can get it. In some cases, the court gave a verdict with more than a hundred thousand baht or a million-baht compensation; however, the victims rarely receive the actual money. There is a link between compensation from a criminal case and compensation from a civil case. In other words, if you do not pay, you go to jail. However, suppose the judicial process goes through the court verdict and has already passed a negotiation for compensation. In that case, the offenders will go to jail, so what is the point for them to pay compensation? The victims will only receive a number in the court's verdict. Despite the fact that there is legislation mentioning legal execution for human trafficking cases, currently, none of the cases has been a success to pay actual money to the victims. Mostly, the victims

will receive compensation during the negotiation process. So, if the victims want to receive a right (to punish the offender), we will go through a legal process. However, if we want the victims to receive monetary remedies and treatment, we have to negotiate” (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

Further, the victim may incur costs throughout the process of requesting compensation: *“...this (compensation process) refers to legal execution, which is a burden on victims as they have to hire a lawyer for this. It is a problem if an offender does not intend to pay compensation; a victim will not receive any compensation” (RA4-TH-05-A, Deputy Attorney, Office of the Public Prosecution).*

“Besides, it is a challenge to trace a property for legal execution in Thailand. The period of prescription for a claim established by a final judgment or a compromise contract is ten years because it is difficult to trace all properties. It is easy to track bank accounts as we can submit a request to the bank. For tracing land property, it is challenging to guess in which area the offender has a property. You cannot search his name if he owns any property in Thailand because the Department of Lands system does not have a comprehensive country database. I used to suggest referring to the Anti-Money Laundering Act, under which the court can order the forfeiture, yet we could not do that. In the case of a bank account, the culprit will withdraw money right after the filing of a case, so there is no money left when the case is over. If we check minutes of human trafficking meetings, nobody has received actual monetary remedies for the past ten years. In other words, we only receive a number in the verdict, not real money” (RA4-TH-06-A, Lawyer, SR Law Firm).

One of interviewed lawyers with many years’ experience in claiming compensation for child victims, including OCSEA victims, shared some recommendations that should be enforced in Thailand, for example:

“requiring the offenders to deposit some money as a lawsuit settlement – according to her, it is an excellent system to guarantee that victims will receive some amount of money, or establishing a trust fund system for child victims that offenders can pay by instalment” (RA4-TH-06-A, Lawyer, SR Law Firm).

Such a system could also prevent the situation where some parents will receive large amounts of money at once and conclude that they can earn money by through their children falling victim to crime. Also, this system could protect children from unreasonable money spending. The respondent talked about a case of a child exploited in prostitution that she handled, where the girl spent lot of the 800,000 THB compensation (\$25728 USD as of March 2021) she received from a US offender, and later returned to prostitution when the compensation was gone.

Successes

Possibility to highlight one or more cases where (some) things were done well and where the child got proper access to justice

One positive in relation to compensation is that there has been enhanced public awareness of the fact that OCSEA victims can claim compensation:

“The first case was related to a paedophile who had sexually abused children. It was not a human trafficking case. We requested 100,000 Baht, and the child victim got that money as compensation. That was five years ago, and that was our good starting point...The offender of that case was an American, and the FBI came to process a parallel investigation. As there were Americans involved in the case, the judge could not do much as he might lose face. The offender also was afraid of being imprisoned. He agreed to pay the compensation so he could receive a suspended sentence under the supervision order. But the judge disapproved; he believed the child's testimony. That case was the starting point in which victims became aware that they have the right to compensation. After that, there was a kind of awakening in Chiang Mai, that if the case were child sexual abuse, the children would get compensation. And I have applied for compensation continually since then” (RA4-TH-01-A, Lift International).

However, some parents consider that OCSEA gives them a chance to earn money from the compensation. *“When a case happens, some parents may take it as a way to earn extra money. Sometimes when the case was finished, the victim did not receive any compensation because the parents took it. There was a case in which a child victim was granted a million Baht compensation. We evaluated that there was a possibility that the parents would spend all the money because they are gamble and drug-addicted” (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).*

One of the respondents also stated that *“a process of requesting compensation needs to go through careful consideration and investigation. Compensation is not a grant you will receive immediately after investigation. In Pattaya, there was a case of a homeless child victim who received compensation from a case, so he told his homeless friends that you will receive money if you tell them the information” (RA4-TH-05-A, Deputy Attorney, Office of the Public Prosecution).*

To overcome these challenges, one of the interviewed lawyers stated that *“because it was a lot of money, the US court also would like to know how this money will not hurt the child. The court wanted us to set up a trust fund for a child victim and pay by instalment; however, we do not have that system in Thailand, but we can suggest a child victim's financial plan and life plan. I asked the NGO to suggest a life plan (where the child will be studying, etc.) for the child victim and requested a financial advisor (using my network) to suggest a money investment plan and financial plan based on the proposed life plan. We explained the financial plan to the child victim that if he/she sticks to the financial and life plan, he/she will be able to hold the compensation effectively. It is a sample to adapt a trust fund model with the actual system we have in Thailand. Otherwise, the victim or parents may use up money in no time” (RA4-TH-06-A, Lawyer, SR Law Firm).*

After the prosecution, child victims generally do not want to go back to school since they do not want to be questioned or embarrassed by their friends or teachers. It is also common for child victims to

quit school. The respondent coming from an NGO based in Chiangmai explained how to negotiate with the school principal on this matter:

“We met a principal of a very famous school in Bangkok who expressed that they were concerned with the victim's feeling of embarrassment. On that day, our team had seven people with the police Chief of Commander to negotiate this school issue. I told the principal that we talked to the victim, and he/she wanted to continue the study. He/she also received a lot of support from friends. The school should be a sample of love and forgiveness to the victim instead of dismissing him/her. The school told us that they got pressure from the school alumni association to dismiss the victim. We did not talk to the alumni association, but the association should not have any rights to deprive students of their rights. In the end, the school did not dare to dismiss the student. We have been doing this in several schools as it happened in most schools, not only well-known schools” (RA4-TH-04-A, Director, The HUG Project).

The negotiation between the NGO and school is a success story because it can effectively promote child victims' social rehabilitation, which can sustainably prevent children from falling victims of OCSEA in the future. The negotiation also educates surrounding people to develop a correct understanding of OCSEA.

In terms of preventive measures, one of the interviewed public prosecutors mentioned the achievement of her division's activity with stakeholders to educate young people on how to protect themselves and their friends from OCSEA:

“The “Nongtongroo- Sister, you should know” session content included getting to know the legislation, how to protect themselves and how to collect online crime evidence (for example, how to capture a photo and profile of an offender). We also explained several offenders’ crime plans, so students are aware of them. Besides, partner NGOs also had a session on trauma treatment after online exploitation and on a channel to ask for help. You can refer to the [Facebook page “Nongtongroo... We discussed with True Corporation on a project called “Young Producer Award” under the topic of “Stop Sexual Exploitation” \(please refer to \[Youtube Young Producer Award\]\(#\)”\)](#). There was a contest opening in July - December 2019, and we received 500 plus storyboards from all over the country. In a selection process, we selected 20 storyboards and invited 20 young producers to join an intensive workshop with well-known producers from the Advertising Association of Thailand. On the 19th, we selected a winner for an award. You can see the winner video (1-minute video) with a total of 10 videos from Youtube...” (RA4-TH-10-A, Deputy Director General, Department of the Trafficking in Persons Litigation, the Office of the Attorney General).

Challenges/Changes Needed

Main challenges described by the criminal justice professionals

The interviews showed that some significant challenges remain to be tackled in Thailand to ensure that OCSEA victims can properly access justice, and several suggestions for change were made.

One of the challenges is the understanding, knowledge and skill of implementing partners to investigate human trafficking cases following the inquisitorial system, as explained in the section relating to compensation above. In addition, OCSEA cases are not always human trafficking offences and the implementing partners should be able to identify the difference between OCSEA and human trafficking, given that the type of the crime will have consequences related to compensation, treatment and services provided to the child victims as well as the punishment given to offenders.

“The lack of knowledge and understanding of the legal process related to human trafficking as the laws have the trial process, is different from other laws or general criminal cases. Human trafficking cases are specific and rarely happened, and it did not happen in all areas. When it happens in any area, the investigation officer, lawyer, or court officers tend to be confused. They don't know the legal process, so it creates problems and affected all processes” (RA4-TH-01-A, Lift International).

Concerns that the Child Protection Committee does not work effectively were also raised. According to Section 7-16 of the Child Protection Act, the Child Protection Committee should be established at national and provincial levels to implement several activities and duties regarding the protection of the child as identified in Section 14 of the Act.²² However, one of the respondents who is also on one of the child protection committees in Chiangmai stated the committee's ineffectiveness:

“I observe that their work is not sustainable and that they just invite us because they want us to listen. Their work does not function well and isn't sustainable. It is not effective; they don't have any goals to change things. They invite us to listen to statistics, for example, how many children with disabilities today, this month, this quarter, and this year in Chiangmai, how many new born babies, and so on. They don't have a plan on what problem they want to address and what we should do, something like that. They haven't thought through what they should do. They organise meetings because the law indicates that they have to do so to fulfil their work. They also establish committees, taskforce groups, and draft resolutions and ask the signatures from committees to approve it – that is what they have to do to complete their tasks. Having the meetings makes their work successful as they have to do it according to their system. But if you ask about their results, there is nothing” (RA4-TH-01-A, Lift International). Hence, the child protection committee cannot effectively protect children from any harm, as required by law, especially OCSEA, which seems to be a new and complicated issue for the committee.

In addition, the understanding and capacity of implementing partners may also represent a challenge:

“Recently, a big challenge is to determine the jurisdiction of cases because we cannot identify the location where the incident took place as the crime is committed online. Thus, we are not sure where the crime scene was or which jurisdiction has the authority to investigate the case. We don't know

²² Government of Thailand (2003), [The Child Protection Act of 2003](#), Section 7-16.

which location is relevant to the case. This is problematic. The authority's location to investigate the case depends on the investigation authority, which further leads to the prosecutor's authority to file the lawsuits. It is still a big problem, and if we want to address it, we should solve the problem of the jurisdiction and authority related to the location first" (RA4-TH-01-A, Lift International).

One of the respondents from an NGO also stated that: *"some NGOs just permanently delete the material which means that evidence is lost. If you have deleted 20 Facebook URL links, it creates an issue where we cannot process the case because of lack of evidence. Many organisations did not understand this process, and we tried to advocate for this. Sometimes, child victims request us to delete their online pictures; if we can delete it, we will do, but sometimes we cannot delete it as we have to keep it as evidence"* (RA4-TH-04-A, Director, The HUG Project).

Further, the challenge of evidence collection was mentioned by one of the interviewed lawyers: *"there is a challenge for staff who work with online child abuse cases. The case contains a lot of details to collect all evidence from the victims. The process to collect evidence is different and more complicated from former cases we worked on; for example, when we search for evidence in secret prostitution areas, we will have a meeting before going to the field. However, we have difficulty working with the victims for the online child abuse case, and we cannot collect online evidence"* (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

Additional information on this matter was given by one of the interviewed public prosecutors, who stated that: *"...offenders using fake social media accounts result in the delay of investigating and finding offenders. Sometimes it takes 1-2 months to discover the [identity of the] offender, which means the victim's pictures are forwarded further, and it is challenging to retrieve/remove them from the cyber world..."* (RA4-TH-10-A, Deputy Director General, Department of the Trafficking in Persons Litigation, the Office of the Attorney General).

One of the public prosecutors participating in the interview mentioned the complication of the legal implementation that ultimately discourage the implementing partners, especially the Computer-Related Crime Act that has been developed by learning from other countries:

"...From my 20 more years of working experience, I feel that our country is always solving issues behind the current crime trend. We copied models from foreign countries but did not consider a useful and practical way to suppress it. When it comes to online child abuse protection, which has more complicated legislation like the Computer-Related Crime Act and technology involvement, police in the provinces are unwilling to deal with such cases. In fairness to the police, they do not know where to begin with. A lot of discussions were raised and discussed; how to collect the evidence, should they use the Criminal Procedure Code or Computer-Related Crime Act or both? While law enforcement officers who are specialised in Computer-Related Crime Act mostly available in the Headquarter, how other provinces tackle this challenge?" (RA4-TH-10-A, Deputy Director General, Department of the Trafficking in Persons Litigation, the Office of the Attorney General).

In regard to the coordination between stakeholders, one of the interviewed police officers stated that: *"...we face a challenge with the delay of criminal investigations as we have to depend on ISP. It takes from 2 weeks to 2-3 months to get the information..."* (RA4-TH-03-A, Investigation Unit 4, Investigation Division, Provincial Police Region 5).

However, two respondents expressed that the police officers lack coordination with them, for example: *"we received an investigation report from the police, there were a few cases where investigation officers consulted us before submitting the investigation reports"* (RA4-TH-10-A, Deputy Director General, Department of the Trafficking in Persons Litigation, the Office of the Attorney General).

Principally, the police are not required to consult with the public prosecutor. Still, by doing so, they will know better how to collect evidence and information to present before the judge. One of the interviewed lawyers mentioned that her organisation had *"created the co-protect called 'Big Brother, Big Sister' project, collaborating with the Provincial Police Region 5. The project aims to support children to join recreational activities and strengthens the collaboration between the police and NGOs at the same time"* (RA1-TH-01-A, Thailand).

Workload and social pressure were also identified as challenges for criminal justice actors: *"I think the obstacle is work overload that I hardly have time to sleep. We also have a challenge from social pressure from online social media. I can talk on behalf of the police that they have a huge case volume and receive a lot of social media pressure, especially when a story is posted, and social media people hashtag and blame them. Many times, we were in such kind of pressured situations"* (RA4-TH-04-A, Director, The HUG Project).

When relevant professionals are under social pressure, especially when society expects them to do something to solve the problem, careless reactions may reduce the organisational reputation and discourage workers.

One respondent raised a recent example that evidences this: *"For example, if you see Twitter news hashtag #mygrandchild [in Thai language], there was a guy who showed an intention to abuse his grandchild, and social media put this hashtag trying to protect that grandchild. Simultaneously, we worked on 5 cases, and 6-7 children were exploited; nevertheless, social media people were not aware of that and put pressure (on law enforcement officials) to prioritise the grandchild abuse case. In the end, it turned out that the grandchild abuse case was a makeup story while going back to help the actual child victims in the other abuse cases was too late. It makes us feel very discouraged"* (RA4-TH-04-A, Director, The HUG Project).

Finally, problems with legal interpretation were also identified: *"we found a problem in terms of legal interpretation, especially if the case belongs to possessing child pornography or child trafficking. Sometimes a child has already been a victim of online child trafficking (and the culprit who processed the pornography has been caught). Still, the police also filed a human trafficking case for a person who sold the victim's photos. So, it turns out that the same child victim has been in the investigation process of the Criminal Procedure Code for 3-4 times already"* (RA4-TH-04-A, Director, The HUG Project).

Main changes suggested to make it easier/better for children to participate in criminal cases against their abusers

Four respondents supported the idea of establishing a court working specifically on OCSEA cases. Thailand has established an anti-human trafficking court to handle human trafficking cases specifically, and since then, the conviction of human trafficking offenses has become more appropriate. The respondents reflected that, like human trafficking, working on OCSEA requires special knowledge and

skills. Therefore, establishing a court specifically for OCSEA cases should effectively support children to participate in the justice process. One of the respondents proposing this idea stated that:

"I think if there are a special procedural law and special division in the court like human trafficking cases, it will improve the efficiency of the judicial law for online child abuse cases. Otherwise, it will be in the normal process that the court processes cases based on present legislation" (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

However, the interviewed public prosecutor reflected that Thailand's justice system is not adapted to establish a superior court on OCSEA because *"I assume that the court is not ready for this system since judges have many cases under their responsibilities. In this system, the judge will ask questions during the court's testimony as there is no jury system in Thai Law. According to the procedure, inquiry officers and public prosecutors will present evidence, yet the court may not have time to go through all documents to understand all details. The regular inquisitorial system is that the court will accept investigation reports and testify in the court, yet the actual process is not like that. Practically, public prosecutors still have to talk to the witness. There will be a feeling of uneasiness when a witness testifies in the court. If you want a witness, the witness should feel relaxed in the court. Therefore, the standard inquisitorial system in human trafficking cases may not answer the most efficient process and create fair justice. We adapt the process from other countries, but we only implement it partially, since we do not have a jury. So, in my opinion, it is not suitable for Thai justice"* (RA4-TH-05-A, Deputy Attorney, Office of the Public Prosecution).

On the other hand, one of the respondents explained the pros and cons of having a superior court on OCSEA by comparing it with the court of Intellectual Property Rights:

"The special court has both advantages and disadvantages. The special court will enable specialists in this area to work directly and more efficiently. Indeed, it is necessary to have such a special court to solve a particular case of child abuse. However, we cannot have special courts all over the country in the long term; it will consume a lot of budgets and human resource training. In any case, I also support the idea of having a special court. A good example is the exclusive court of Intellectual Property Rights (IPR). Although legal officers can take care of typical IPR cases, there are some complicated cases of unclear IPR infringement activities that require specialised training and attention to tackle this case. The special court for child protection and women's rights is like IPR special court that requires specialised legal enforcement teams to tackle cases. If law enforcement officers do not have specialised in these fields, the child victim may not receive the utmost benefit while the culprit may receive a lighter sentence than it should be. These days, many unexpected cases are challenging to match with applicable laws" (RA4-TH-07-A, Lawyer, TLCS Legal Advocate).

Recommendations

One respondent indicated that awareness should be raised so that children know how to best protect themselves online: *“In fact, this issue is not everyone’s responsibility; I want to tell the children that you have to take care of yourself, as the technology is moving forward, no one can take care of you better than yourself. The technology accesses to everyone, so you have to know how to use the Internet, you have to be more careful in using the Internet”* (RA4-TH-01-A, Lift International).

Further, it was suggested that the budget allocation for OCSEA should be increased to enhance the capacity of involved officials: *“We should also consider reasonable budgets and human resources for these cases. It is not like human trafficking cases that we have a plan for zero cases, and now we are moving towards the goal. The online threats, however, are tough to control. I talked to an official responsible for blocking pornography websites in government offices, and he said that although we have 1000 staff working on this, it is not enough. It is ideal for investigating and arresting all perpetrators, but I wish we could do that...”* (RA4-TH-02-A, Lawyer, Foundation of Child Understanding (FOCUS)).

Two respondents stated that specific legislation on OCSEA should be developed and enacted in order to support the implementing partners: *“I think it would be better to have specific legislation on online child exploitation and abuse, since many times we have to interpret if the act is against the law or not. For example, a case of woman [child] pornography which was possessed by another woman. Is this considered crime since it was mentioned in the law as “Whoever possesses child pornography for the sexual benefit of oneself or another person...”? It is suggested to see the intention of possession if it is for the sexual benefit or not. Will a woman own woman pornography for sexual benefit? What do you think?... I assure you that I also think it is against the law. However, a few cases have shown that the police do not submit an inquiry file to the public prosecutor because there is no intention behind the possession. Therefore, I agree that there should be specific legislation for online child abuse not to need any interpretation”* (RA4-TH-03-A, Investigation Unit 4, Investigation Division, Provincial Police Region 5).

“It would be great to have special legislation on online child abuse, which includes specific procedural law. If it is not possible, it is still ok to have special legislation on this topic so that we can focus only on this legislation without searching for other legislation scattered around” (RA4-TH-06-A, Lawyer, SR Law Firm).

In terms of drafting a new regulation on OCSEA, one of the respondents who is involved in the bill drafting process updated that: *“...the law drafting committees and Children and Youth Protection Division see gaps in Thailand’s current Child Protection Law, especially in the perspective of online child sexual exploitation and abuse. We notice that the foreign Child Protection Act is more efficient than the Child Protection Act in Thailand. The challenge comes from both facts and laws. The problem in terms of laws is both from Substantive Law, which involves setting various offenses to protect children, and Procedural Law, which involves collecting testimony and giving government authorities the capacity to reach information to assist and protect children. Therefore, we are trying to introduce this bill. Originally there were two models; 1) To introduce this bill to become a new legislation, 2) To*

introduce the legislation to amend contents in the Criminal Code. We are currently moving forward on the second model...” (RA4-TH-07-A, Lawyer, TLCS Legal Advocate).

“The most challenging thing is on how to introduce this bill to become legislation. And what we should consider the most is the amendment should be suitable to protect children...we are trying to include more child protection measures. However, the amendment of the Criminal Code is part of the Substantive Law, which refers to offenses. Once we finish this amendment, we will amend the Procedural Law, which will increase measures to collect sufficient testimony to protect children” (RA4-TH-07-A, Lawyer, TLCS Legal Advocate).

On the other hand, some interviewed lawyers and public prosecutors mentioned that the problem is not the law. The judge has the principle to follow when an offense is related to several regulations: *“I do not have any problem as I always implement all of those Acts in consideration to be prosecuted. The court will refer to the Act that contains the most substantial sentence if it counts as one offense” (RA4-TH-10-A, Deputy Director General, Department of the Trafficking in Persons Litigation, the Office of the Attorney General).*

Likewise, one of the interviewed lawyers stated that the lack of professionalism of implementing partners, particularly the police, is the problem, not the regulations: *“They [implementing partners] should study the legislation thoroughly to become professional. If you become a professional, you can implement and refer to all available legislations. It will damage injured persons if we work with unprofessional police officials who do not have investigation skills. I think this is a big challenge for the police to improve and develop their professional skills” (RA4-TH-09-A, Lawyer, Social Equality Promotion Foundation).*

One respondent noted that the implementing partners should be aware that OCSEA is different from other child abuse and exploitation cases because it requires knowledge and skill on Internet and communication technology:

“I want to suggest more on NGO sides about hotline channels. Any NGOs who work on hotline channels for online child exploitation and transfer the case to the police should understand the appropriate protocol. They should not help victims delete online information but transfer the case to the police to manage at the earliest. If NGOs provide incorrect information to child victims, it creates more difficulty for case management when it comes to us. Sometimes there are egos between NGOs, so they do not inform us of the case or transfer a case to the police, but the police do not process the case, so it finally comes to us anyway” (RA4-TH-04-A, Director, The HUG Project).

One of the interviewed lawyers also mentioned that the implementing partners, especially law enforcement, should change their attitude towards OCSEA child victims: *“If the officers ever had a chance to see the kids' real condition, it could significantly change their attitudes and perceptions toward these kids. So, the deep investigation of the background of the kids, the probation which understands the root cause of the problem, and the participation in the court or with the prosecutors would be helpful” (RA4-TH-01-A, Lift International).*